

(S E R V E D)
(September 12, 2002)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

FACT FINDING INVESTIGATION NO. 25 -
PRACTICES OF TRANSPACIFIC STABILIZATION AGREEMENT MEMBERS
COVERING THE 2002-2003 SERVICE CONTRACT SEASON

SECTION 15 ORDER TO
THE TRANSPACIFIC STABILIZATION AGREEMENT
AND ITS MEMBERS

On August 23, 2002, the Federal Maritime Commission ("Commission") issued an Order of Investigation in this proceeding, designating the undersigned as Investigative Officer and delegating certain authority to the Investigative Officer to gather facts relating to the issues set forth in that order. Among the delegations is the authority to issue order pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714. By that authority, the Investigative Officer is requiring the Transpacific Stabilization Agreement ("TSA") and the ocean common carriers listed in the Appendix hereto to furnish certain information pertaining to the practices of TSA members with regard to their negotiation of service contracts for the 2002-2003 season and with regard to their implementation of general rate increases and peak season surcharges through means that may discriminate against non-vessel-operating common carriers ("NVOCCs"). The responses to this Order, and to other simultaneous information gathering efforts, will be useful in determining whether TSA member

practices warrant further action by the Commission.

On May 10, 2002, the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") and the International Association of NVOCCs, Inc. ("IANVOCC") jointly filed Petition No. P1-02, "Petition of the National Customs Brokers and Forwarders Association of America, Inc. and the International Association of NVOCCs, Inc. for an Investigation of the Contracting Practices of the Transpacific Stabilization Agreement" ("the Petition"). NCBFAA and IANVOCC (hereafter occasionally "the Petitioners") alleged that TSA members had violated sections 10(c)(7) and 10(c)(8) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1709(c)(7) and 1709(c)(8), by engaging in a concerted practice of discrimination against NVOCCs regarding the negotiation of, and rates implemented pursuant to, their service contracts. Specifically, the Petitioners have alleged that TSA members made an internal agreement, which they subsequently executed, to complete the negotiation and signing of contracts with proprietary shippers prior to commencing negotiations with NVOCCs. The Petitioners further alleged that TSA members effected a collusive agreement to charge NVOCCs significantly higher rates than assessed against proprietary shippers for the same services. The manner in which TSA members allegedly implemented this agreement was through the discriminatory assessment of general rate increases ("GRI") and a peak season surcharge ("PSS") against NVOCCs.

While the Commission staff was pursuing an informal inquiry into the allegations of the Petition, TSA members announced a further GRI to become effective August 19, 2002. The Commission then commenced this fact finding investigation. In order to gather evidence as to the issues raised in the Petition, the Investigative Officer has determined to serve this section 15 Order upon TSA and TSA member and affiliated carriers and to collect similar information on TSA

member practices from NVOCCs and other affected persons and organizations by separate inquiries.¹

NOW, THEREFORE, IT IS ORDERED that, pursuant to section 15 of the Shipping Act of 1984, TSA and the ocean common carriers listed in Appendix A of this Order shall submit to the undersigned Investigative Officer responses to the following questions and requests on or before October 14, 2002:

1. Identify all consultants or consulting agencies, analysts, economists, or other trade experts, from whom you sought or were provided any information or opinion at any time from May 2001 to the present concerning the eastbound transpacific trade (including but not limited to reports dealing with policy issues, pricing, available capacity, vessel utilization, costs, and revenues), regardless of whether a report or study was compiled or written.
2. For the period May 2001 to the present, provide a copy of all consultant² reports, studies, analyses, fact sheets, and recommendations concerning the eastbound transpacific trade (including but not limited to reports dealing with policy issues, pricing, available capacity, vessel utilization, costs, and revenues), in your possession, custody or control, including those commissioned and/or purchased for use by TSA, its officials or members, and those that may have been provided to TSA, its officials, or staff by individual member lines.

¹Under the authority of section 15 of the 1984 Act, the Commission may require reports or other information only from "any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof..."

²"Consultant" refers to any independent organization (e.g., Manalytics International, Inc., Drewry Shipping Consultants, or any other entity) that provides data, assists in performing data collection, or performs data analysis on a commercial basis, either under contract or otherwise.

3. Provide in chronological order a copy of all memoranda or other types of notices, including electronic transmissions, that were issued by TSA officials to TSA members from May 2001 to the present.
4. Provide a copy of all formal or informal minutes³ in your possession, custody, or control that reference any meeting of any TSA committee, including teleconferences, held between May 2001 and the present.
5. Provide a copy of all forecasts in your possession, custody, or control, concerning the eastbound transpacific trade for any period beginning 2001 through 2005, with regard to supply (forecast vessel capacity) and/or demand (forecast liner cargo), that were prepared by TSA officials and their respective staffs, purchased from consultants or other commercial data sources, or provided to TSA by a member line or any other carrier.
6. Provide a copy of all internal studies, reports, or analyses in your possession, custody, or control, concerning actual or potential (forecast) competition in the eastbound transpacific trade from NVOCCs covering any period from 2001 through 2005.

³For the present purposes, the term "minutes" refers both to official and informal records or summaries memorializing the proceedings at the meeting of an organization, including initial, intermediate and final drafts of official summaries, and individual memorializations of meetings made by attending parties, including handwritten notes, e-mail, outlines, inter-office memoranda, and personal memos-to-the-file.

7. For the period of May 2001 to the present, provide in chronological order a copy of all documents relating to the eastbound transpacific trade, including but not limited to correspondence, personal notes and e-mail messages, sent to or from, or otherwise communicated to or by, any TSA member, which includes any director, officer, employee, agent, or other individual associated with any TSA member.
8. For the period of May 2001 to the present, provide in chronological order a copy of all documents relating to the eastbound transpacific trade, including but not limited to correspondence, personal notes, and e-mail messages, sent to or from any TSA director, officer, employee, or agent, or other individual associated with TSA, or otherwise shared between individuals associated with TSA.
9. For all meetings of TSA or any of its committees held beginning May 2001 onward, provide a copy of all correspondence, documents, circulars, reports, etc., provided to member lines by TSA either in advance of the meeting (as background material or for discussion at the meeting) or at the meeting – whether originated by TSA or on its behalf or by any TSA member line.
10. Provide a list of all TSA committees, subcommittees, groups, or similar organizations that collect, process and/or provide information, make recommendations, or make final decisions with respect to pricing and service issues. For each such group, please identify (a) its composition, including the names and business titles of all individuals assigned to each

group; (b) its responsibilities; (c) its location and/or the locations of its meetings; (d) a brief summary of the activities it conducted in 2001 and 2002; and (d) by name, title, and business address, the individual or individuals in charge of each such group.

11. Provide copies of any and all surveys of service contracts conducted by TSA or by or among TSA members since May 1, 2001.
12. Provide copies of all communications (including but not limited to memoranda, reports, data, e-mails, notes, etc.), concerning the information referred to in the TSA Voluntary Service Contract Guideline No. 45 of Revision 21.
13. Provide copies of all Cost Data worksheets (referenced in Minutes meeting No. 22/2001 of the TSA Presidents' Meeting Item #5).
14. Provide a copy of the results of the two most recent TSA surveys of market conditions, commodity outlook, projected growth of consolidated cargo, mixed commodities, FAK or "General Department Store Merchandise" ("GDSM").
15. Provide a copy of any and all documents or communications produced or generated at any time from May 1, 2001 to the present, including but not limited to correspondence, e-mails, telephone notes, personal notes, or memoranda, that in any manner suggest, advise, instruct or recommend to any sales or marketing staff or personnel to implement or extend any

general rate increase, peak season surcharge, or other surcharge in the eastbound transpacific trade.

16. Provide a copy of any and all employee manuals or guides that were produced or generated at any time from January 1, 2001 to the present, which were provided to, drafted for, or generated by, any sales or marketing staff or personnel relating in any manner to sales or marketing instruction, techniques, policies, or practices.
17. Provide a copy of any and all documents or communications, including but not limited to correspondence, e-mails, telephone notes, personal notes, or memoranda, by which any employee, agent, or other individual associated with your company or organization informed any NVOCC or proprietary shipper about the implementation or extension of any general rate increase, peak season surcharge, or other surcharge, at any time from May 1, 2001 to the present, relating to the eastbound transpacific trade.
18. Identify each individual by name, title, and business address employed by or associated with your company who has responsibility for providing information to, or receiving information from, any internet portal, such as Intra, GT Nexus, or Cargo Smart, or who otherwise represents your company in any capacity in its relations with any portal, in connection with the eastbound transpacific trade.

19. Provide a detailed report identifying with specificity all information provided by you, or any agent, employee, or other individual on your behalf, to any internet portal, such as Intra, GT Nexus, or Cargo Smart, and any information received from such portal at any time from May 2001 to the present, including but not limited to the following:
- a) All rate information pertaining in any regard to the eastbound transpacific trade;
 - b) Number of shipments obtained through each portal, and for each shipment identify the cargo by volume and type;
 - c) Name and business address of each shipper with which you transacted or had any contact directly or indirectly through each portal; and
 - d) All trade forecasts or other data compilations in any way concerning or relating to the eastbound transpacific trade provided to, or received from, any portal.
20. Identify each individual by name, title, and business address who has any responsibility or otherwise is assigned to discuss, negotiate, or sign service contracts with NVOCCs and proprietary shippers, and identify all accounts assigned to each individual by name of NVOCC or proprietary shipper.
21. Please provide separately for each contracting year, May 1, 2001 to April 30, 2002, and May 1, 2002 to April 30, 2003, the number of service contracts filed prior to May 1 of each year and the number of service contracts filed on or after May 1 of each year for: (a) proprietary shippers; and (b) NVOCCs.

22. Please provide a summary of the service contracts entered into for the contract year May 1, 2002 to April 30, 2003, by completing the following table with the number of service contracts in each category⁴:

	Total No. of Service Contracts	May 1, 2002 GRI Applicable	June 1, 2002 PSS Applicable	Aug. 19, 2002 GRI Applicable	May 1, 2002 Base Rates Higher than May 1, 2001	May 1, 2002 Base Rates Lower than May 1, 2001
Large NVOCCs						
Large Proprietary Shippers						
Medium NVOCCs						
Medium Proprietary Shippers						
Small NVOCCs						
Small Proprietary Shippers						

⁴For the present purposes, NVOCC and proprietary shippers shall be defined as small, medium, or large based on the total amount of TEUs the respective TSA member transported or has committed to transport (i.e. the minimum quantity commitment) on behalf of each NVOCC and proprietary shipper *per annum* during the stated period. Small shippers will be defined as a firm annually shipping 100 TEUs or less; a medium shipper between 101 and 2000 TEUs; and a large shipper as a person or entity whose total shipments are over 2,000 TEUs.

23. Identify by name and business address any and all NVOCCs or proprietary shippers who have made any inquiry or complained to your company or organization, including any employee, agent or other individual associated with your company or organization, regarding your company or organization's implementation or assessment of any general rate increase or peak season surcharge, at any time from May 1, 2001 to the present.

IT IS FURTHER ORDERED that each question listed above must be answered separately and fully, in writing and under oath, and signed by the corporate official providing the answer(s);

IT IS FURTHER ORDERED that each response provided pursuant to this order must clearly identify the question to which it responds;

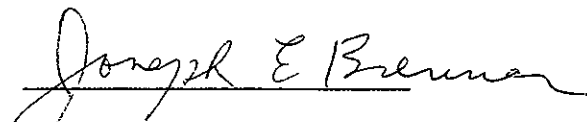
IT IS FURTHER ORDERED that, for every responsive document produced which is written in a language other than English, a copy of the original plus a complete and accurate translation must be provided;

IT IS FURTHER ORDERED that each entity listed in Appendix A has a continuing obligation throughout the course of the present fact-finding investigation until its official conclusion to supplement immediately its responses with any new, additional, or different information or documents that it may acquire.

IT IS FURTHER ORDERED that minutes of any TSA meeting, held at any time during the course of the present fact-finding investigation until its official conclusion, shall be provided to the Investigative Officer within seven days of the meeting;

IT IS FURTHER ORDERED that all information and documents collected pursuant to this order shall be treated as confidential to the full extent permitted by law; provided, however, that this

shall not preclude the use of such information and documents by the Commission, as necessary, in any Commission or court proceeding.


Joseph E. Brennan

Appendix A

1. Transpacific Stabilization Agreement
1901 Harrison Street, Suite 1620
Oakland, California 94612
2. American President Lines ("APL")
c/o APL Co. Pte. Ltd.
1111 Broadway
Oakland, California 94607
3. A.P. Moller Maersk-Sealand
P.O. Box 880
Madison, New Jersey 07940
4. CMA CGM, S.A.
300 Lighting Way
2nd Floor
Secaucus, New Jersey 07096
5. COSCO
100 Lighting Way
4th Floor
Secaucus, New Jersey 07094
6. Evergreen Marine Corp.
60 Columbia Road, Patriot's Plaza
Morristown, New Jersey 07960
7. Hanjin Shipping Company, Ltd.
The Atrium
80 East Route 4
Paramus, New Jersey 07652
8. Hapag-Lloyd Container Linie, GmbH
c/o Hapag-Lloyd America, Inc.
399 Hoes Lane
Piscataway, New Jersey 08854
9. Hyundai Merchant Marine Co., Ltd.

c/o TPS Westbound Pricing
Two Hickory Center
1750 Valley View Lane
Suite 300
Dallas, Texas 75234

10. Kawasaki Kisen Kaisha, LTD.
c/o "K" Line America, Inc.
8730 Stony Point Parkway
Suite 400
Richmond, Virginia 23235
11. Mitsui O.S.K. Lines, Ltd.
2300 Clayton Road
Suite 1500
Concord, California 94520
12. Nippon Yusen Kaisha ("NYK")
c/o NYK Line (NA), Inc.
300 Lighting Way
Secaucus, New Jersey 07094
13. Orient Overseas Container Line, Ltd.
c/o OOCL (USA), Inc.
2633 Camino Ramon
Suite 400
San Ramon, California 94583
14. P&O Nedlloyd, B.V.
One Meadowlands Plaza, 12th Floor
East Rutherford, New Jersey 07073
15. Yang Ming Marine Transport Corp.
c/o Solar International Shipping Agency, Inc.
Newport Office Tower, 25th Floor
525 Washington Boulevard
Jersey City, New Jersey 07310-1607
16. Lloyd Triestino Di Navigazione, SpA
c/o Evergreen Marine Corp.
60 Columbia Road, Patriot's Plaza
Morristown, New Jersey 07960

17. Hatsu Marine Limited
c/o Evergreen Marine Corp.
60 Columbia Road, Patriot's Plaza
Morristown, New Jersey 07960